

Appendix 2

CERTIFICATE OF PARTICIPATION in the

Candidate Conservation Agreement for the Lesser Prairie-Chicken (*Tympanuchus pallidicinctus*) and Sand Dune Lizard (*Sceloporus arenicolus*)

CP Number _____

This certifies that the Participating Cooperator of the property described herein is included within the scope of the above named Candidate Conservation Agreement (CCA) for the lesser prairie-chicken (LPC) and sand dune lizard (SDL) under the authority of Section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA), 16 U.S.C. 1531-1544.

The goal of the Bureau of Land Management (BLM), U.S. Fish and Wildlife Service (FWS), Center of Excellence for Hazardous Materials Management (CEHMM) and the Participating Cooperator is to reduce and/or eliminate threats to the LPC and/ or SDL. By agreeing to conduct the conservation measures described herein, and contribute funding or providing in-kind services for conservation, the FWS and BLM agree that should the LPC or SDL become listed as a threatened or endangered species under the ESA, there is a high degree of certainty that additional measures would not be required for Participating Cooperators.

This Certificate of Participation (CP) is voluntary between CEHMM, BLM, FWS and the Participating Cooperator. Through this CP, the Participating Cooperator voluntarily commits to implement or fund specific conservation actions that will reduce and/or eliminate threats to the SDL and /or the LPC. Funds contributed as part of this CP will be used to implement conservation measures and associated activities. The funds will be directed to the highest priority projects to restore or reclaim habitat at the sole discretion of BLM and FWS. By signing below, the Participating Cooperator acknowledges that they have read and understand the CCA and this CP. They further acknowledge that this CCA may not be sufficient to prevent the listing of either species and that BLM, FWS, and CEHMM make no guarantee as to the effect of the listing of either species.

Participating Cooperator's Name: _____

Address: _____

The following Conservation Measures are to be accomplished in addition to those described in the CCA:

1. To the extent determined by the BLM representative at the Plan of Development stage, all infrastructures supporting the development of a well

(including roads, power lines, and pipelines) will be constructed within the same corridor.

2. On enrolled parcels that contain inactive wells, roads and/or facilities that are not reclaimed to current standards, the Participating Cooperator shall remediate and reclaim their facilities within three years of executing this CP, unless the Cooperator can demonstrate they will put the facilities back to beneficial use for the enrolled parcel(s). If an extension is requested by the Cooperator, they shall submit a detailed plan (including dates) and receive BLM approval prior to the three year deadline. All remediation and reclamation shall be performed in accordance with BLM requirements and be approved in advance by the Authorized Officer.
3. Allow no new surface occupancy within 30 meters of areas designated as occupied or suitable, unoccupied SDL dune complexes or within delineated shinnery oak corridors. The avoidance distance is subject to change based on new information received from peer reviewed science.
4. Utilize alternative techniques to minimize new surface disturbance when required and as determined by the BLM representative at the Plan of Development stage.
5. Provide escape ramps in all open water sources under the Participating Cooperator's control.
6. Install fence markings along fences owned, controlled, or constructed by the Participating Cooperator that cross through occupied habitat within two miles of an active LPC lek.
7. Bury new powerlines that are within two (2) miles of LPC lek sites active at least once within the past 5 years (measured from the lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
8. Bury new powerlines that are within one (1) mile of historic LPC lek sites where at least one LPC has been observed within the past three years (measured from the historic lek). The avoidance distance is subject to change based on new information received from peer reviewed science.
9. _____

10. _____

I. ENROLLED ACREAGE

Participating Cooperator will provide a list of enrolled parcels (leases or portions of leases) including lease number, detailed legal description, and acreage for each enrolled parcel in this CP (see Exhibit A). Enrollment of acreage does not guarantee approval of any application on an enrolled parcel, and still requires Agency approval.

The Participating Cooperator is responsible for ensuring that all provisions of this CP are implemented by its agents, sub-contractors, and other interest holders on all parcels enrolled under this CP.

II. PLANS OF DEVELOPMENT

Due to the amount of acreage (multiple parcels) enrolled under this CP, it is not possible to prepare an accurate Plan of Development on all enrolled acreage at the time of executing this CP. However, the Participating Cooperator agrees to prepare Plans of Development on a case-by-case basis as requested by the BLM. It is understood that BLM's request for Plans of Development will be associated with the Participating Cooperator's anticipated development activities.

III. SUSPENSION FOR NONPAYMENT.

The Participating Cooperator hereby agrees that, as long as this CP is in effect, the BLM can suspend the approval of any permit on enrolled parcels identified in Exhibit A of this CP until the Habitat Conservation Fee associated with that permit is paid.

IV. HABITAT CONSERVATION FEES AND PAYMENTS

The Participating Cooperator will provide funds for the restoration, reclamation and protection of suitable LPC and SDL habitat over a minimum three-year period that begins with the execution of this CP and which will continue until the CP is terminated as provided herein. The funds will be generated by a Habitat Conservation Fee, which is based on the amount of area disturbed by oil and gas operations. The Participating Cooperator will remit the Habitat Conservation Fee to CEHMM. CEHMM will maintain the funds in a Habitat Conservation Fund Account specific to this CP. The purpose of the Habitat Conservation Fund Account is to meet the Participating Cooperator's obligations under the CCA.

The Participating Cooperator will make the first payment into the Habitat Conservation Fund Account at the date of execution of this CP. The second and third payments will be made on the first and second anniversary of the execution date of this CP. For each of the three years, the annual prepayment will be calculated at \$2 per gross acre for all parcels enrolled in this CP, with a minimum of \$20,000 deposited each year.

The Participating Cooperator may, at their sole option, pay more than the required amount into their Habitat Conservation Fund Account during any prepayment period but never less than the required amount as described herein.

Prepayment of any new Federal parcels added by addendum to this CP will be calculated at \$2 per gross acre and be due at the time the parcels are added to the CP. The total acreage enrolled in this CP, and the resulting annual prepayment, will be recalculated on the remaining anniversary dates of the 3 year cycle. No annual prepayment will be required after the initial 3 year period, but the Habitat Conservation fee will remain in effect.

After this CP is executed, the BLM will calculate the applicable Habitat Conservation Fee associated with any new permit approval for new surface disturbance using the methodology shown on Exhibit B. Habitat Conservation Fees assessed and contributed according to Exhibit B of this CP shall also satisfy the funds contribution requirements of the CCA.

CEHMM will deduct the resulting Habitat Conservation Fee from the Participating Cooperator's Habitat Conservation Fund Account balance at the time of Agency permit approval. If the Participating Cooperator's remaining Habitat Conservation Fund Account balance is less than the resulting Habitat Conservation Fee, the Participating Cooperator will pay the remainder of the Habitat Conservation Fee. When CEHMM deducts fees from the Participating Cooperator's account, they will notify the Participating Cooperator within 60 days detailing the:

- Amount of the Habitat Conservation Fee associated with the application,
- Remaining Habitat Conservation Fund Account balance, and
- Payment due, if any.

The Participating Cooperator's obligation to make payments as described above shall be suspended if any administrative or judicial challenge prevents the implementation of this CP.

V. HABITAT CONSERVATION ACCOUNT FUNDS

Habitat Conservation Fees generated from any activity on any enrolled parcels, and for off-parcel activities needed to develop the enrolled parcels, will be debited from funds paid into the Habitat Conservation Fund Account under this CP at the time of permit approval. See Exhibit B.

VI. PARCEL TRANSFERS AND ADDITIONS

Transfers

Transfers may occur within this CP or between this CP and the CP of another Participating Cooperator. Enrolled parcels can be transferred either before or after a listing decision occurs. Parcels may be transferred within habitat for a listed species, but parcels may not be transferred from areas outside habitat of a listed species into habitat of a listed species. If both species are listed, parcels outside habitat for sand dune lizard may not be transferred into sand dune lizard habitat. All transfers require Agency

approval. Notification of any parcels transferred will be transmitted to CEHMM 30 days prior to the transfer. The description will include the lease number(s), detailed legal description(s), and acreage of the parcel(s) involved.

Transfers within this CP

The Participating Cooperator may amend this CP to remove a parcel and replace it with an unenrolled parcel of same or less acreage. Transferring of parcels within this CP will not result in an increase of total enrolled acres described in this CP. Once an activity (APD, ROW, etc) authorized under this CP results in ground disturbance, the entire lease is no longer eligible for transfer to another geographic location. However, the parcel (and associated lease acreage, if any) in its current location (legal land description) is still eligible for transfer to another Participating Cooperator.

Transfers to another Participating Cooperator

Parcels enrolled under this CP can be transferred to another Participating Cooperator with a CP before or after a listing decision occurs. Parcels may only be transferred from the CP of one Participating Cooperator to the CP of another Participating Cooperator. After a listing decision, an interested party may become a Participating Cooperator if they acquire an enrolled parcel and wish to continue enrollment of the parcel. The new holder of the parcel must sign an amended CP within 30 days of acquiring the enrolled parcel and prior to any operation, maintenance, or disturbance occurs on the transferred enrolled parcel. Conservation measures, all terms and conditions of the Candidate Conservation Agreement and CP, and the payment schedule will be assumed by the receiving Participating Cooperator.

Additions

The Participating Cooperator may amend this CP to add parcels at any time before the LPC is listed. If the SDL is listed under the ESA, the Participating Cooperator may only amend this CP to add parcels outside SDL habitat. Because SDL habitat is wholly within the range of LPC, no additional parcels may be added to this CP if the LPC is listed under the ESA. This right to add newly acquired parcels to this CP exists without regard to the method of acquiring the parcels (whether by merger, purchase, etc.). Fees for acreage added within the prepayment period will be assessed according to schedule described in Section IV.

VII. TERMINATION.

The Participating Cooperator agrees that it (or any successor or transferee) shall not terminate this CP until after the third prepayment period ends. Any time after the third prepayment period ends, the Participating Cooperator may terminate this CP by giving thirty (30) days written notice to CEHMM and the BLM as to any or all of the enrolled parcels. Any applications for permission to perform operations on the terminated parcels for which the Participating Cooperator has not paid the Habitat Conservation Fee at the time of termination will be processed as if the CP did not exist. Any funds remaining in Participating Cooperator's Habitat Conservation Fund Account at the time of termination,

voluntary or for cause, will be donated to the CEHMM for conservation efforts to support the LPC and the SDL and will not be refunded.

BLM or FWS may only terminate the CP for the Participating Cooperator's failure to pay the Habitat Conservation Fee (including failing to prepay amounts into the Habitat Conservation Fund Account during the first three years) or for the Participating Cooperator's failure to implement the conservation measures documented in this CP. However, the BLM or FWS will first provide notice of any deficiency to the Participating Cooperator and give them the opportunity to cure. If the deficiency is not corrected, or due diligence is not being shown to correct the deficiency within sixty (60) days of the receipt of the letter, the parcel(s) involved will be terminated from this CP. If Participating Cooperator has three (3) deficiencies within 365 consecutive days (excluding deficiencies cured as stated above), the entire CP will be terminated.

Termination of this CP will relieve Participating Cooperator of any additional Habitat Conservation Fees for new surface developments on the terminated parcels.

VIII. NO WAIVER.

The Participating Cooperator, by entering into this CP, does not concede its agreement with, or endorsement of, all underlying studies and conclusions in the CCA. Further, the Participating Cooperator does not waive any legal rights or remedies that may exist outside of this CP. The Participating Cooperator is also not responsible for work being accomplished by the agencies or CEHMM using contributed funds.

IX. RELEASE

If at any time any administrative or legal challenge prevents the implementation of this Certificate of Participation, the Participating Cooperator agrees to release the United States, Department of the Interior, USFWS, BLM, and CEHMM from any legal claims related to, and, against all other Parties to, this CP and CCA. All funds remaining in the Habitat Conservation Fund Account will be retained by CEHMM and be used for conservation of the covered species.

X. AMENDMENT

This CP may be amended with the written consent of each of the parties hereto. The parties agree to process requests for amendments in a timely manner. This CP will only be amended upon agreement of all parties.

XI. MULTIPLE ORIGINALS

This Certificate of Participation may be executed in any number of multiple originals. A complete original of this Certificate of Participation shall be maintained in the records of each of the Parties hereto.

XII. NOTICE

Any notice permitted or required by this Certificate of Participation shall be transmitted within any time limits described in this CP to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested, and addressed as follows or at such other address as any Party may from time to time specify to the other Parties in writing:

Participating Cooperator: _____

Contact: _____

Address: _____

Telephone: _____

Fax: _____

E-Mail: _____

BLM (Appropriate office)	CCA Biologist BLM Carlsbad Field Office 620 E. Greene Street Carlsbad, NM 88220-6292 575/234-5972 (t) 575/885-9264 (f)	CCA Biologist BLM Roswell Field Office 2909 W. Second Street Roswell, NM 88201-2019 575/627-0272 (t) 575/627-0276 (f)
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USFWS	LPC/SDL CCA USFWS-NMESFO 2105 Osuna Road NE Albuquerque, New Mexico 87113 505/346-2525 (t) 505/346-2542 (f)
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CEHMM

LPC/SDL CCA
CEHMM
505 N. Main Street
Carlsbad, NM 88220
505/885-3700 (t)
505/885-6422 (f)

XIII. SIGNATURES

IN WITNESS WHEREOF THE PARTIES HERETO have executed this Certificate of Participation to be in effect on the date of the last signature below.

Participating Cooperator and Affiliation

Date_____

Center of Excellence for Hazardous Materials Management

Date_____

FWS Authorized Officer

Date_____

BLM Authorized Officer

Date_____

EXHIBIT A
Property Description for Enrolled Parcels

EXHIBIT B

The Habitat Conservation Fee for new surface disturbance associated with oil and gas development activities will be calculated using the following scales. The scales also apply to third parties doing work for the Participating Cooperator either on or off the Participating Cooperator's enrolled parcels, regardless of who constructs or operates the associated facilities. The Participating Cooperator must notify BLM prior to conducting any surface disturbing activities associated with this CP on or off the enrolled leases either by the Cooperator or third-party subcontractors. The Habitat Class of the new surface disturbance is determined by the location of the activity being developed, not actual habitat found on site.

1) New Well Location Fees¹

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$20,000/location
Core Management Area	\$20,000/location
Habitat Evaluation Area	\$15,000/location
Scarce & Scattered Population Area	\$12,500/location
Isolated Population Area	\$10,000/location
Other areas ²	\$ 3,000/location

¹. Includes well pad and associated access road

². Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

2) New Surface Development Fees

For other new surface disturbances associated with enrolled parcels, but not directly attributable to a new well pad³ and associated road, the Habitat Conservation Fee will be based on the following scale:

<u>Habitat Class</u>	<u>Conservation Fee</u>
Primary Population Area	\$5,000/acre
Core Management Area	\$5,000/acre
Habitat Evaluation Area	\$3,750/acre
Scarce & Scattered Population Area	\$3,125/acre
Isolated Population Area	\$2,500/acre
Other areas ⁴	\$1,000/acre

³. Co-located wells that require an increase in the size of the existing pad will be assessed by new acres disturbed.

⁴. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

Note: All acreage calculation will be rounded up to the next whole acre.

New operations on previously disturbed land (*e.g.*, co-located new well on an existing pad or new pipeline in an existing corridor, etc.) will incur no additional conservation fee, unless the area to be redisturbed has been reseeded and/or reclaimed as part of reclamation. Fees will also be assessed for any new acreage disturbed.

The disturbed area will be calculated based on information received and/or on-the-ground observation. Habitat Conservation Fees are based on the total acres disturbed in each appropriate habitat class. Should the Participating Cooperator disagree with the estimate of the area disturbed, they have the right to challenge the estimate and provide supporting data. BLM will have the responsibility for the final determination of the area disturbed.

All above ground powerlines will have a fee calculated using the above scale for New Surface Development. The acreage will be based on information provided in the permit application.

Habitat Conservation Fees will not be charged for buried powerlines or surface pipelines in accordance with the BLM 2008 Special Status Species Resource Management Plan Amendment (RMPA).

3) Fees associated with new seismic data acquisition

<u>Habitat Class</u>	<u>3D Survey Conservation Fee</u>	<u>2D Survey Conservation Fee</u>
Primary Population Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Core Management Area	\$ <u>10.00</u> /acre	\$ <u>200.00</u> /linear mile*
Habitat Evaluation Area	\$ <u>7.50</u> /acre	\$ <u>150.00</u> /linear mile*
Scarce & Scattered Population Area	\$ <u>6.25</u> /acre	\$ <u>125.00</u> /linear mile*
Isolated Population Area	\$ <u>5.00</u> /acre	\$ <u>100.00</u> /linear mile*
Other areas ⁵	\$ <u>1.50</u> /acre	\$ <u>25.00</u> /linear mile*

*or any fraction thereof

- ⁵. Includes areas outside the RMPA planning area boundary but within historic range of LPC in New Mexico.

The acquisition of seismic data on enrolled parcels may also disturb the surface of other land not enrolled in this CP. The Habitat Conservation Fee calculated for seismic activity includes disturbances occurring on both enrolled and non-enrolled land.

Routine production operations

Routine production operations are not considered new surface development and will not create the obligations to pay a Habitat Conservation Fee. Routine production operations are those which do not require an agency permit or approval, and those operations that require an agency approval but do not disturb the surface.